

### **Remarks**

Claims 1-79 are cancelled. Claims 80-96 have been added and are pending.

Applicants wish to thank Examiner Garvey for taking the time to discuss new claim 80 in telephonic interviews on February 17 and 23, 2006, and March 1, 2006. As a result of these interviews, applicants and Examiner Garvey agreed that new claim 80 will be entered into the record and examined on the merits.

### **Amendments to the Claims**

New claim 80 is directed to a composition comprising influenza virus particles. The particles comprise a recombinant vRNA segment. The specification supports new claim 80 at page 30, lines 6-18.

New claim 81 recites that the recombinant vRNA segment encodes an HA protein. New claim 82 recites that the HA protein is a modified HA protein. The specification supports claims 81 and 82 at page 36, lines 31-35.

New claim 83 recites that the recombinant vRNA segment encodes an NA protein. New claim 84 recites that the NA protein is a modified NA protein. The specification supports claims 83 and 84 at page 37, lines 25-29.

New claim 85 recites that the recombinant vRNA segment encodes an RNA-directed RNA polymerase protein. New claims 86-88 recite that the RNA-directed RNA polymerase protein is PB2, PB1, and PA, respectively. The specification supports claims 85-88 at page 34, lines 8-15.

New claim 89 recites that the recombinant vRNA segment encodes a nucleoprotein protein. The specification supports claim 89 at page 35, line 32 to page 36, line 9.

New claim 90 recites that the recombinant vRNA segment encodes NS protein. New claims 91 and 92 recite that the NS protein is NS1 and NS2, respectively. The specification supports claims 90-92 at page 38, lines 23-30.

New claim 93 recites that the recombinant vRNA segment encodes M protein. New claims 94 and 95 recite that the M protein is M1 and M2, respectively. The specification supports claims 93-95 at page 38, lines 23-30.

New claim 96 recites that the virus particles are attenuated. The specification supports claim 96 at page 50, lines 15-18.

The new claims are supported by the specification and add no new matter.

#### Amendments to the Specification

The specification has been amended to insert sequence identifiers at each nucleotide or amino acid sequence disclosed in the specification (amendment instructions (1)-(17)).

The specification has also been amended to correct typographical errors (amendment instructions (8), (11), (13), and 14)).

These amendments address formal matters and introduce no new matter.

#### Sequence Listing

Substitute paper and computer readable format copies of a sequence listing accompany this amendment. The substitute sequence listing contains new SEQ ID NOS: 64-71. These sequences were disclosed in the originally filed application at page 76, line 10 (SEQ ID NO: 64), page 76, line 7 (SEQ ID NO: 65), Figure 2 (SEQ ID NOS: 66 and 67), and Figure 11 (SEQ ID NOS: 68-71). Thus, the substitute sequence listing adds no new matter.

I also believe that the sequence listing information recorded in computer readable format copy of the sequence listing is identical to that of the paper copy of the sequence listing.

### Priority

The non-final Office Action asserts that claims 35-79 should only be accorded the priority date of the instant application (April 7, 2004) and not to any of the applications to which applicants have claimed priority. In the interest of compact prosecution, applicants have canceled claims 35-79 and have filed new claims 80-96.

New claims 80-96 are supported by the applications to which applicants have claimed priority. To assist the Patent Office, applicants provide a table indicating the support for new claims 80-96 in the specification of the 07/527,237 application, the earliest application to which the instant application claims priority and which issued as U.S. Patent 5,166,057 (copy attached), in the table below:

Claim No.	Specification Support for Indicated Claim in U.S. Patent No. 5,166,057
80	Col. 16, lines 23-34
81	Col. 19, lines 53-57
82	Col. 19, lines 53-57
83	Col. 20, lines 15-20
84	Col. 20, lines 15-20
85	Col. 18, lines 28-36
86	Col. 18, lines 28-36
87	Col. 18, lines 28-36
88	Col. 18, lines 28-36
89	Col. 19, lines 20-33
90	Col. 20, lines 50-56
91	Col. 20, lines 50-56
92	Col. 20, lines 50-56
93	Col. 20, lines 50-56
94	Col. 20, lines 50-56
95	Col. 20, lines 50-56
96	Col. 26, lines 22-26

Because new claims 80-96 are supported by the 07/527,237 application, and are similarly supported by the other applications to which the instant application claims priority, the instant application should be awarded the benefit of priority of the filing date of the 07/527,237 application, May 22, 1990.

### Claim Objections

The non-final Office Action objects to claims 35-37 because they contain typographical errors. Claims 35-37 have been canceled. The objection is moot.

Applicants respectfully request withdrawal of this objection.

### The Rejections of Claims 35-79 Under 35 U.S.C. § 102(a) and (e)

The Office Action asserts that claims 35-79 are anticipated under four separate rejections:

- Claims 35-48 as anticipated by U.S. Patent No. 6,544,785 under each of 35 U.S.C. § 102 (a) and (e); and
- Claims 49-79 as anticipated by U.S. Patent No. 6,649,372 under each of 35 U.S.C. § 102 (a) and (e).

Claims 35-79 have been canceled. The rejections are moot.

Applicants respectfully request withdrawal of the anticipation rejections.

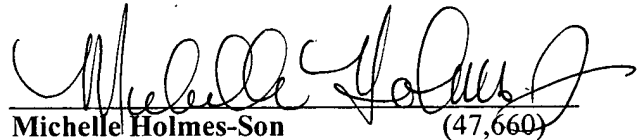
### The Rejections of Claims 35-79 Under 35 U.S.C. § 101

The non-final Office Action rejects claims 35-79 as claiming the same invention as U.S. Patent Nos. 6,544,785, and 6,649,372. Claims 35-79 have been canceled. The rejections are moot.

Applicants respectfully request withdrawal of the double patenting rejections.

Respectfully submitted,

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